HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 574(S/S)06:

1. Bipin Chandra Ranged S/o Sri B.S. Ranged,
   r/o Ranged Bhawan Ghasia Mahadev,
   Srinagar, Pauri Garhwal,
2. Sanjay Naudiyal S/o Sri P.N. Naudiyal,
   R/o village & P.O. Srikot,
   Gangnali Srinagar, Pauri Garhwal,
3. Vinod Kumar S/o Sri Jai Dutt Thapliyal,
   R/o village & Post Padampur Sukhro,
   Kotdwar, Pauri Garhwal,
4. Sushil Rawat S/o Sri S.S. Rawat
   R/o village & Post Padampur Motadhak,
   Kotdwar, Pauri Garhwal,
5. Balbir Singh S/o Sri K.S. Rawat,
   R/o village & Post Padampur Motadhak,
   Kotdwar, Pauri Garhwal,
6. Indu Mohan Negi S/o Alam Singh Negi,
   R/o village & Post Padampur Motadhak,
   Kotdwar, Pauri Garhwal,
7. Arun Kumar S/o Sri Govind Prasad,
   R/o Upper Kalabar Kotdwar,
   District Pauri Garhwal,
8. Satish Kumar S/o Sri Satya Prasad,
   R/o Upper Kalabar Kotdwar,
   District Pauri Garhwal,
9. Raj Kumar S/o Sri Jagdish Prasad,
   R/o Vikas Nagar, Gari Ghat, Kotdwar,
   District Pauri Garhwal,
10. Vinod Negi S/o Sri K.S. Negi,
    R/o Khumbi Chaur Kotdwar,
    District Pauri Garhwal,
11. Gajendra Prasad S/o Sri Govind Prasad,
    R/o Near Tehsil Pauri,
    District Pauri Garhwal,
12. Jag Mohan Singh S/o Sri Shyam Singh,
    R/o village Kotli Post Khirsu,
    District Pauri Garhwal,
13. Umesh Chandra S/o Sri Badri Prasad,
    R/o village Pali Post Kot Mahadev,
    District Pauri Garhwal,
14. Rajendra Singh S/o Sri Dhyan Singh,
    R/o village Pali Post Kot Mahadev,
    District Pauri Garhwal,

15.Deepak S/o Sri Uma Dutt,
R/o village & Post Pokhra,
District Pauri Garhwal,
16.Bhagwan Singh S/o Sri Dalip Singh,
R/o village Basru, District Pauri Garhwal,
17.Bijendra Kishore S/o Sri K.N. G\Nautiyal,
R/o Niranji Bagh, G.I.C. Road,
Srinagar Garhwal,
18.Mohan Singh S/o Sri Saty Singh,
R/o village Okhlu, Post Office Khirsu,
District Pauri Garhwal,
19.Pramod Kumar Uniyal S/o Sri Kirti Ram Uniyal,
R/o village Uniyal Gaon, Post Chandolaria,
District Pauri Garhwal, ---- Petitioners.

Vs.

1. State of Uttaranchal, through,
the Secretary Education, Govt. of Uttaranchal,
Dehradun.
2. Director, Vidyalayie Shiksha,
Uttaranchal, Dehradun,
3. Zila Basic Shiksha Adhikari,
District Pauri Garhwal at Pauri. ----Respondents.

Sri B.D. Upadhyay, learned counsel for the petitioners,
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.D. Upadhyay, learned counsel for the petitioners and learned Standing Counsel for the State of Uttaranchal/respondents nos. 1 to 3.

2. Counter affidavit is filed today, the same be taken on record. Counsel for the parties are agreed that the writ petition may be disposed of at the admission stage itself.

3. The petitioners have filed this writ petition for the following reliefs:-

i. A writ, order or direction in the nature of certiorari to call for the record of the case and quash the order

dated 17/19.04.2006 passed by the respondent no. 3 contained in annexure 1 to the writ petition,

ii. A writ, order or direction in the nature of mandamus directing the respondents not to interfere with the services of the petitioners and pay them salary admissible for the post regularly as and when it falls due,

iii. Any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case,

iv. Award cost of the petition to the petitioners.

4. By the impugned order dated 17/19th April 2006, the appointment provided to the petitioners vide order dated 11.11.2002 has been cancelled by the District Basic Education Officer, Pauri Garhwal.

5. Submission of the learned counsel for the petitioners is that though the petitioners were appointed vide order dated 11.11.2002 as Assistant Teacher in Primary schools and have joined their services immediately thereafter, but the respondents have canceled the appointment order after about four years' of their appointment, without affording them any opportunity of hearing. Counsel for the petitioners has further submitted that the petitioners have been given appointment in pursuance of the order passed by the Allahabad High Court in a writ petition filed by them.

6. The respondents, in their counter affidavit, have taken stand that the appointment of the petitioners was illegal as in pursuance of the Notification, the candidates who have been passed B.Ed. up to 1991 were to be appointed against the vacancies of Assistant Teachers, Primary School. The petitioners have passed their B.Ed. examination in the year 1992, even then the District Basic Education Officer has provided them appointment, which was against the Govt. Order and Notification issued by the Department. It has been further

submitted by the respondents in their counter affidavit that an inquiry was conducted by the District Basic Education Officer, district Pauri Garhwal and after the report was submitted by him, the Joint Director of Education, Garwal Mandal, Pauri has cancelled the appointment of the petitioners.

7. It is undisputed that the petitioners were not given any opportunity of hearing before passing the impugned order.

8. Learned Standing Counsel has contended that since the appointments were purely illegal, it was not required to afford opportunity of hearing because a condition was also there in their appointment order that the appointment can be cancelled, at any time, without prior information and without providing any opportunity of hearing.

9. Admittedly, the appointment of the petitioners has been cancelled prior to giving them opportunity of hearing it is well settled law that when a person has been provided appointment, his appointment cannot be cancelled without giving him an opportunity of hearing, and such an action would be against the Principals of Natural Justice. Keeping in view the facts and circumstances of the case, the writ petition deserves to be allowed.

10. Accordingly, the writ petition is allowed. The order dated 17/19th April 2006 passed by respondent no. 3 is hereby quashed. However, the respondents may pass appropriate orders, after affording opportunity of hearing to the petitioners in accordance with law. No order as to costs.

(M.M. Ghildiyal, J.)

May 3, 2006:
NCM: